IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2960 OF 2004

Eknath Jadhav .. Petitioner

Vs.

Associated Cement Company Ltd. .. Respondent

Ms. Gayatri Singh with Ms. Apoorva Khaivar for the Petitioner.

Mr. C.U. Singh with Mr. A.K.Jalisatgi and Mr. A.B. Desai for Respondent.

CORAM: B.H. MARLAPALLE, J.

Date of Reserve : June 10, 2005

Date of Pronouncement : June 17, 2005

P.C.:

1. Heard Ms. Gayatri Singh with Ms. Apoorva Khaivar, the learned counsel for the petitioner and Mr. C.U. Singh with Mr. A.K. Jalisatgi and Mr. A.B. Desai, the learned counsel for the respondent-Company.

2. Being aggrieved by the award passed by the II

Labour Court at Thane in Reference (IDA) No. 56 of 1992 on 13/6/2003, this petition has been filed.

3. The workman was retrenched from service with effect from 10/11/1983 along with other workmen, while he was working as a Fitter with effect from 22/7/1980. The said order was a subject matter of challenge in the Reference. The workman had joined the CRS Unit of the Company in the year 1975 as a helper and he was made permanent after one year and promoted to the post of Operator by an order dated 17/6/1978. He was transferred to CATAD Plant of the company as Assistant Operator in the higher payscale of Rs.200-8-280/EB/12-400 (Grade "F"). He was confirmed as Operator in CATAD Grade "E" on the basic salary of Rs.290/- per month with effect from 1/1/1979. By an order dated 5/1/1981 he was transferred as a Fitter in the Engineering Services Department with effect from 22/7/1980. It appears that the operations of the CATAD Plant came to be suspended between 6/6/1983 and January 1984 and obviously the retrenchment was effected when the Plant operations were under

suspension. It is claimed by the petitioner that after the Plaint operations were resumed, he approached the company but was not allowed to report for duty and vide letter dated 22/5/1984 he was informed that he was retrenched with effect from 10/11/1983. Vide his letter dated 6/3/1984 he claims to have informed that he had not received the retrenchment notice and the said retrenchment was illegal. He, therefore, raised a demand for reinstatement with full backwages and continuity in service vide his representation dated 9/4/1984. He had approached this court by filing Writ Petition and consequently his demand came to be referred for adjudication by the State Government.

4. The thrust of the challenge before the Labour Court in the statement of claim filed by the workman was regarding the non compliance of the mandatory conditions set out in Section 25F of the Industrial Disputes Act 1947 while issuing the order of retrenchment. It was submitted that the seniority list was not displayed, a separate notice was not

issued to him and the notice pay as well as retrenchment compensation was not paid to him. The company filed its Written Statement and denied all these allegations. Oral evidence was recorded by both the parties.

5. The learned counsel for the petitioner-workman submitted that the award impugned suffers from errors apparent on the face of the record and the notice of retrenchment issued during the period when the Plant operations remained suspended would not be held to be legal. The seniority list was not displayed and this also was a failure on the part of the company to comply with the requirements of Rule 81 of the Industrial Dispute (Bombay) Rules 1957. In support of these arguments, the learned counsel relied upon the decision of this Court in the case of Trade-Wings Limited vs. Prabhakar Dattaram Phodkar of Bombay and Ors. reported in **1992 I CLR 480**.

6. The company examined Mr.Suhas Radhakrishnan.

He stated in his depositions that the list of seniority was notified on 1/11/1983 and it was displayed on the notice board. He further stated that the retrenchment order along with other three documents was sent by post under Registered Post A.D. on 8/11/1983 at the address of the workman recorded in the company's register and all these were posted together. Among these documents was also a Demand Draft in favour of the workman towards his notice pay and retrenchment compensation as well, in compliance with the requirements of Section 25F of the I.D. Act. This evidence remained intact and the company had placed on record the postal envelope returned by the postal authority with the remark. As against this the workman in his cross-examination before the Labour Court admitted that he had refused to accept the envelope by which retrenchment notice and Bank Demand Draft were sent.

7. It was not the contention of the workman before the Labour Court or in his representation for demand of reinstatement that during the period of

suspension of operation, the workers were not allowed to come to the factory. While the suspension of operation was continued, the workers were not allowed to enter the gate and resume duties and, therefore, it could not be accepted that the seniority list displayed on the board could not be perused by the workman. Even otherwise, the seniority list which was displayed on the notice board was placed on record before the Labour Court and it is proved in the evidence of Shri Suhas Radhakrishnan that in the Fitter's category the name of the workman appears at Sr.No.5 and his date of joining has been shown to be 22/1/1980. The Fitters at Sr. Nos.1 to 4 are admittedly senior to him in that category. It has also been proved by the evidence that right from 1979 he was working as a Fitter in the CATAD Plant and even if that is accepted to be correct, the Fitters at Sr.Nos.1 to 4 had joined as Fitters prior to the year 1979. Their respective dates of joining as Fitters are shown as under:-

(a) J.D. Kamath 1-1-70

(b)	M.S. Nair	17-4-78
(c)	N.S. Patil	3-5-78
(d)	S.A. Raje	3-5-78

8. It is thus clear that no Fitter junior to the workman was retained in Fitter category and the petitioner was not victimised or retrenched irrespective of the seniority and, therefore, the rule of seniority has not been breached by the company while effecting the impugned retrenchment. This court in the case of Chemical Mazdoor Sabha vs. Vital Organics Pvt. Ltd., Raigad & ors. reported in **1995 II CLR 465** after referring to the earlier decision in the case of Prabhakar Dattaram Phodkar (Supra) held that the provisions of Rule 81 of the Industrial Dispute (Bombay) Rules 1957 is directory and non compliance of the said rule cannot be visited with the consequence of rendering the action of retrenchment wholly non-est and void.

9. The learned Judge of the Lower Court has

considered the evidence of the respective parties, the decisions of this court as relied upon by the respective parties and recorded a finding that the action of retrenchment was in keeping with the requirements of Section 25F of the I.D. Act and, therefore, held that the workman was not entitled for the reliefs as prayed for. Consequently, the reference was rejected. The reasoning set out by the Labour Court in the impugned award cannot be termed as grossly erroneous so as to call for interference in this petition under Article 227 of the Constitution.

10. Hence, the petition fails and the same is hereby rejected summarily.

(B.H. Marlapalle,J.)